RECEIVED

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

AUG 6 2001

··· •	The same of the sa
In the Matter of	DOCKET FILE COPY ORIGINAL OFFICE OF THE SECRETARY
Application of Verizon Pennsylvania, Inc.,	,)
Verizon Long Distance, Verizon Enterprises) CC Docket No. 01-138
Solutions, Verizon Global Networks, Inc., and	
Verizon Select Services Inc. for Authorization)
To Provide In-Region, InterLATA Services)
in Pennsylvania	,)

REPLY COMMENTS OF BROADSLATE NETWORKS, INC., CAVALIER TELEPHONE, LLC, CTSI, INC., FOCAL COMMUNICATIONS CORPORATION, US LEC CORP., AND XO COMMUNICATIONS, INC.

John Spilman Broadslate Networks, Inc. 630 Peter Jefferson Parkway Suite 300 Charlottesville, Virginia 22911

Alan M. Shoer Cavalier Telephone, LLC 2134 West Laburnum Ave. Richmond, Virginia 23227

Ronald L. Reeder CTSI, Inc. 3950 Chambers Hill Rd. Harrisburg, Pennsylvania 17111

Renardo L. Hicks XO Communications, Inc. 2690 Commerce Drive Harrisburg, Pennsylvania 17110 Andrew D. Lipman Robin F. Cohn Patrick J. Donovan Swidler Berlin Shereff Friedman, LLP 3000 K Street, N.W., Suite 300 Washington, D.C. 20007 (202) 424-7500 (Telephone) (202) 424-7643 (Facsimile)

Counsel for Broadslate Networks, Inc., CTSI, Inc., Focal Communications Corporation, US LEC Corp., and XO Communications, Inc.

Richard Metzger Pamela Arluk Focal Communications Corporation 7799 Leesburg Pike, 850 North Falls Church, Virginia 22043

Sumner N. Smith
US LEC Corp.
Three Morrocroft Centre,
6801 Morrison Blvd.
Charlotte, North Carolina 28211

Dated: August 6, 2001

No. of Copies rec'd 014 List ABCDE

TABLE OF CONTENTS

TAB.	E OF CONTENTSi	
SUM	IARY	ii
I.	The Application Must Be Denied Because Verizon Does Not Provide Nondiscriminator Access to High Capacity Loops And Transport (Checklist Items 4 and 5)	
	A. Verizon's High Capacity "No Facilities" Provisioning Policy Is Indicative of Broad Anticompetitive and Discriminatory Efforts To Relegate UNEs to Second Class Networks	
	B. Verizon is Attempting to Avoid Its Obligation to Unbundle High Capacity Facilities	5
	C. Verizon's High Capacity Facilities Provisioning Policy is Discriminatory	9
	D. Verizon's New Policy Is Particularly Problematic In The Context Of Its Current Application	11
П.	Verizon Does Not Provide Nondiscriminatory Access To White Pages Directory Listings (Checklist Item 8)	13
III.	Verizon's Application Must Not Be Approved Until The Performance Plan Is Strengthened	
IV.	Verizon's Failure To Produce Accurate And Auditable Electronic Bills Precludes Any Favorable Action On The Application (Checklist Item 2)	
V.	Verizon's GRIPS Policy Violates Its Legal Obligation To Permit CLECs To Interconnect At One Point Per LATA (Checklist Item 1)	24
VI	Conclusion	28

SUMMARY

The Commission must deny Verizon's application because Verizon is not providing nondiscriminatory access to high capacity loops and transport in accordance with Checklist Items 4 and 5. Verizon's new "no facilities" policy in connection with provisioning of high-capacity loops and transport is the latest manifestation of Verizon's broader anticompetitive efforts to relegate unbundled network elements ("UNEs") to separate and inferior networks. Verizon's latest policy change is yet another step in its ongoing efforts to force CLECs to utilize special access circuits, with the attendant higher costs and longer provisioning intervals of such circuits, rather than UNEs or UNE combinations, such as EELs. In particular, Joint Commenters are concerned that Verizon will only provision a limited number of DS-1 facilities as UNEs, and if those facilities are exhausted, will deny additional requests for such facilities unless the requesting CLEC is willing to pay for much higher priced special access circuits.

Joint Commenters agree with the Pennsylvania Office of Consumer Advocate ("Consumer Advocate") that Verizon has not demonstrated that it provides CLECs nondiscriminatory access to directory listings. As the Consumer Advocate stated, and the evidence produced by Joint Commenters CTSI, XO and others at the state proceeding demonstrated, Verizon's failure to include complete, accurate white pages listing for CLEC customers is a systemic problem that warrants denial of Verizon's application.

Joint Commenters submit that Verizon's application must not be approved until the Performance Assurance Plan ("PAP") is strengthened. As the Justice Department indicated, there is ample evidence that the existing PAP is insufficient to prevent backsliding if Verizon achieves its objective of gaining Section 271 authority in Pennsylvania.

Verizon's failure to produce accurate and auditable electronic bills also precludes approval of its application. Verizon's electronic billing system is so woefully defective that the Justice Department concluded that it could not endorse Verizon's application at this time. Without a functional electronic billing mechanism, a CLECs has no practical means to determine whether Verizon is correctly charging for services the CLEC ordered. The Joint Commenters submit that the Commission should heed the serious reservations expressed by the Justice Department and deny Verizon's application.

Finally, Verizon's GRIPS policy violates Verizon's legal obligation to permit CLECs to interconnection at one point per LATA. Under Verizon's GRIPS policy, CLECs are denied the right to interconnect to Verizon's network at any technically feasible point, including a single point of interconnection within a LATA. The Commission should prohibit Verizon from attempting to impose its discriminatory GRIPS policy on CLECs before considering any favorable action on Verizon's application.

Before the

FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)	
)	
Application of Verizon Pennsylvania, Inc.,)	
Verizon Long Distance, Verizon Enterprises)	CC Docket No. 01-138
Solutions, Verizon Global Networks, Inc., and)	
Verizon Select Services Inc. for Authorization)	
To Provide In-Region, InterLATA Services)	
in Pennsylvania)	

REPLY COMMENTS OF BROADSLATE NETWORKS, INC., CTSI, INC., CAVALIER TELEPHONE, LLC, FOCAL COMMUNICATIONS CORPORATION, US LEC CORP., AND XO COMMUNICATIONS, INC.

Broadslate Networks, Inc., CTSI, Inc., Cavalier Telephone, LLC, Focal Communications Corporation, US LEC Corp., and XO Communications, Inc., (collectively, "Joint Commenters") submit these comments concerning the above-captioned Application by Verizon Pennsylvania, Inc. ("Verizon PA"), Verizon Long Distance, Inc., Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc. (collectively, "Verizon" or "Applicants") for Provision of In-Region, InterLATA Services in Pennsylvania filed June 21, 2001 ("Application"). The Commission should deny the Application because Verizon has failed to demonstrate that it has complied with the requirements of the Section 271 Competitive Checklist.

1

Comments Requested on the Application By Verizon Pennsylvania, Inc. For Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of Pennsylvania, Public Notice, CC Docket No. 01-138, DA 01-1486 (rel. June 21, 2001). Initial Comments were jointly filed by Broadslate, CTSI, and XO, by Cavalier Telephone, LLC, and by US LEC Corp. (with Capsule Communications, Inc., and Covista, Inc.), on July 11, 2001.

- I. The Application Must Be Denied Because Verizon Does Not Provide Nondiscriminatory Access to High Capacity Loops and Transport (Checklist Items 4 and 5)
 - A. Verizon's High Capacity "No Facilities" Provisioning Policy Is Indicative Of Broader Anticompetitive And Discriminatory Efforts To Relegate UNEs To Second Class Networks

In the initial round of comments, numerous parties raised issues in regard to Verizon's provisioning of high-capacity facilities for loop and transport, and, in particular, Verizon's new "no facilities" policy in connection with such facilities.² As explained below, this policy is unlawful and disqualifies Verizon for Section 271 approval in Pennsylvania. More importantly, however, this new policy is apparently symptomatic of a larger policy to relegate UNEs to separate and inferior networks. In fact, ILECs increasingly appear to be seeking establishment of separate network facilities for UNEs and special access.³ ILECs claim "they are entitled to provision UNEs in general (as well as combinations of UNEs, such as EELs) using facilities, inventories, and ordering systems that are physically and logically distinct from the facilities, inventories, and ordering systems used to provision identical access services."⁴

Focal has noted how ILECs:

[a]re in the process of separating their networks into "separate but unequal" apartheid networks in order to provide inferior service quality and maintenance to EELs. ILECs have informed CLECs that contrary to special access circuits, EELs

² CC Docket No. 01-138, Comments of Broadslate Networks, Inc., CTSI, Inc. and XO Commuications, Inc. at 3-14 (July 11, 2001) ("Broadslate/CTSI/XO Comments"); Comments of Capsule Communications, Inc., Covista, Inc., and US LEC Corp. at 2-7 (July 11, 2001) ("Capsule/Covista/US LEC Comments"); Comments of Covad Communications Company at 24-27 (July 11, 2001) ("Covad Comments"); Opposition of Network Access Solutions at 6-7 (July 11, 2001) ("Network Access Comments"); Comments of Cavalier Telephone, LLC at 1-2 (July 11, 2001) ("Cavalier Comments").

CC Docket No. 96-98, Ex Parte Letter of ALTS to Chief, Common Carrier Bureau at 2 (July 26, 2001) ("July 26 ALTS Ex Parte").

Id.

will lack reasonable service quality, there will be more frequent outages, and EELs will not be provided appropriate maintenance. The intent is plainly to discourage CLECs from utilizing the lower priced EELs, to which they are entitled.⁵

For instance, EELs will be classified in a separate database for maintenance and service purposes, and UNE transport networks would not enjoy the same redundancy and thus be subject to more service interruptions. There would also be inferior maintenance, and no service guarantees if the CLEC used EELs as opposed to special access services.⁶ These inequalities would be present despite the fact that special access circuits and EELs are essentially the same equipment.⁷

Joint Commenters are concerned that this policy is further manifested by the fact that increasingly a CLEC can only get the UNE facilities it desires, and to which it is entitled, if it orders them as special access circuits. Joint Commenters are concerned that Verizon will only provide a limited amount of DS-1 facilities as UNEs, and if those facilities are exhausted, then the CLEC is out of luck unless it is willing to pay much higher prices and experience greatly extended provisioning intervals. This clearly undermines the goals the Commission was seeking to achieve when it required DS-1 facilities to be unbundled. For instance, the Commission has noted how ILECs can take advantage of delays caused "by the unavailability of network elements" by using their own unique access to most customers to gain a foothold in new markets," particularly markets "where services may be offered pursuant to long-term contracts (e.g., DSL and other advanced data services), to 'lock up customers' in advance of competitive

⁵ CC Docket No. 96-98, Comments of Focal Communications Corporation at I (April 5, 2001) ("Focal EELs Comments").

⁶ *ld*. at 9.

⁷ Id. at 8.

entry." Allowing Verizon to limit artificially its wholesale inventory of DS-1 facilities while its retail inventory remains unrestricted would undercut the Commission's requirement that DS-1 facilities be provided on an unbundled and nondiscriminatory basis. The Joint Commenters urge the Commission to investigate fully this issue prior to further consideration of this application.

We understand Verizon may raise arguments in its reply that are not yet part of the record. To assure the record is complete, we will anticipate two of these claims here. First, Verizon may assert that the electronics and engineering associated with special access is more expensive than those associated with UNE EELs. Such an argument would be a confession, not a defense. The Commission long ago ruled that "... the access and unbundled network elements provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent provides to itself". Any unilateral decision by Verizon now to degrade the quality of EELs in comparison to special access is a naked violation of the Act as well as the antitrust laws, and

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd. 3696, ¶ 91 (1999) ("UNE Remand Order").

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499, ¶ 312 (1996); see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd. 9587, ¶ 3 (1999) ("In the [UNE Remand Order] we explained that incumbent LECs routinely provide the functional equivalent of combinations of unbundled loop and transport network elements (also referred to as the enhanced extended link) through their special access offerings. Because section 51.315(b) of the Commission's rules precludes the incumbent LECs from separating the loop and transport elements that are currently combined, we stated that requesting carrier could obtain these combinations at unbundled network element prices."); UNE Remand Order at ¶ 481 ("We also decline at this time to reinstate rules 51.315(c)-(f). As discussed above, this issue is currently pending before the Eighth Circuit. As a general matter, however, we believe that the reasoning of the Supreme Court's decision to reinstate rule 51.315(b) based on the nondiscrimination language of section 251(c)(3) applies equally to rules 51.315(c)-(f). Specifically, the Court held that section 251(c)(3)'s nondiscrimination requirements means that access provided by the incumbent LEC must be at least equal in quality to that which the incumbent LEC provides to itself. We note that incumbent LECs routinely combine loop and transport elements for themselves. For example, incumbent LECs routinely provide combinations of loop and transport elements for themselves in order to: (1) deliver data traffic to their own packet switches; (2) provide private line services; (3) provide foreign exchange service. In addition, we note that incumbent LECs routinely provide functional equivalent of the EEL through their special access offerings.") (footnotes omitted).

should be punished immediately. This would also violate the Pennsylvania Global Order. 10

Second, Verizon may claim that the TELRIC rates established for EELs in its service territories, including Pennsylvania, do not properly capture the cost of provisioning special access. This claim rests upon two mistakes. At the outset, that argument would erroneously assume, as discussed above, that the incumbent is entitled to impair the quality of EELs in comparison with special access. This error is then compounded by Verizon's conclusion that any TELRIC costing mistakes by state PSCs concerning EELs (errors that Verizon appears to have created by concealing until now its theory that EELs are only a "poor man's" version of special access) somehow entitle Verizon to take unilateral action concerning the availability of special access functionality at TELRIC rates. If Verizon had any complaint about the states' TELRIC determinations for EELs, its remedy was to take those determinations to Federal court, and not to take the law into its own hands.

B. Verizon Is Attempting To Avoid Its Obligation To Unbundle High Capacity Facilities

Numerous parties have brought to the Commission's attention Verizon's new "no facilities" policy in regard to high-capacity facilities. The new policy embodies a far more restrictive definition of when DS-1 facilities will be available. Significantly, under Verizon's new policy, the term "facility" has been broadened by Verizon to include not only the loop, but the electronics required to condition the loop to meet DS-1 specifications. In addition, Verizon

Joint Petition of NextLink Pennsylvania, Inc., et al., Opinion and Order, Docket Nos. P-00991648 at 85 (Pa. PUC Sept. 30, 1999), aff'd Bell Atlantic v. Pennsylvania Public Utility Commission, Nos. 2780 C.D. 1999 (Pa. Comm. Ct. Oct. 25, 2000) ("The unbundled network element platform (UNE-P) and enhanced extended loop (EEL) are examples of two (2) different forms of combined network elements. . . . Rule 315(b) holds that BA-PA must provide combinations of elements included in the UNE-P to provide its own local service. Similarly, BA-PA currently combines loops and transport to provide special access service. Therefore, application of the Supreme Court's reinstatement of FCC rule 315(b) would require BA-PA to offer UNE-P and EEL to CLECs.").

will only provide unbundled DS-1 loops where all the equipment necessary to provide such loops is already in place, including equipment at the customer location. This effectively restricts the ability of CLECs to get DS-1 loops to locations where the customer either has DS-1 service, or had DS-1 service, and all the necessary equipment is still in place.

Verizon does not deny such a policy has been implemented. In fact, it recently issued a letter on July 24, 2001 defining the parameters of this policy. The letter confirms the description of the policy that CLECs provided in the initial round of comments.

Verizon denies that this is a new policy but this denial is patently contradicted by the fact that CLECs are increasingly experiencing "no facilities available" responses for orders similar to what Verizon had previously provisioned. Verizon also inaccurately states that this policy is in accord with its obligations under existing law. In fact, this new policy contravenes numerous statements by the Commission that ILECs are required to condition facilities to "transmit the digital signals needed to provide services such as . . . DS-1 level signals." The Commission also unequivocally rejected an argument raised by GTE that it was not required to provide

Broadslate/CTSI/XO Comments at 6, CC Docket No. 01-138, Declaration of Craig Plue on Behalf of XO Communications, Inc. at ¶¶ 4-9 (July 11, 2001) ("Plue Declaration"); Covad Comments at 24; Cavalier Comments at 1.

See, Exhibit A, July 14, 2001 Verizon Letter re DS-1 and DS3 Unbundled Network Elements Policy. ("July 24 Verizon Letter").

See July 27, 2001 Letter from Cavalier Telephone to Chief, Market Disputes Resolution Division, Enforcement Bureau, FCC at 7 (July 27, 2001) ("Cavalier Enforcement Letter").

Covad Comments at 25 (citing Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 4761, ¶ 53 (1998) ("First Advanced Services Order")); Cavalier Enforcement Letter at 5.

competing carriers with conditioned loops capable of supporting advanced services where the incumbent is not itself providing advanced services to its customers.¹⁵

Verizon is also violating the terms of this Commission's Order in approving the BA/GTE merger. The Commission directed the parties to adopt the "best practices" of the merging company in unifying their practices. Verizon's practice of refusing to add DS-1/DS-3 electronics to existing facilities to fill CLEC UNE orders constitutes the adoption by the merged entity of one of the worst practices of the former GTE corporation.

Thus, despite its clear obligations under the law, Verizon is attempting to unilaterally impose a position that, as Covad notes, this Commission has rejected on three occasions.¹⁷ Verizon's obligation under the law is clear and unequivocal. As Covad points out:

The only question Verizon is entitled to ask itself when Covad requests a DS-1 loop is this: is it technically feasible to condition a loop to provide DS-1 capabilities to the address requested by Covad? If the answer is yes, then Verizon must provision a DS-1 capable loop. 18

There is no valid issue as to the technical feasibility of providing these facilities. Tellingly, Verizon states that in some cases, at its *discretion*, it will provide DS-1 facilities where "facilities are not available" under its new policy. According to Verizon's July 24 letter, it will provide facilities where it has "construction underway to meet future demand." These orders will have a longer than normal provisioning interval. Verizon claims it will also provide

¹⁵ Covad Comments at 26 (citing UNE Remand Order at ¶ 173); Cavalier Enforcement Letter at 5.

Applications of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Section 214 and 310 Authorization and Application to Transfer Control of Submarine Cable Landing License, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd. 14032, ¶¶ 8, 14 (2000) ("BA/GTE Merger Order").

Covad Comments at 26.

¹⁸ Id.

July 24 Verizon Letter at 1.

facilities "as long as the central office common equipment and equipment at the end user's location necessary to create a DS-1/DS-3 facility can be accessed." Most importantly, Verizon will construct these facilities if the CLEC is willing to order them pursuant to tariff as special access facilities at a much higher tariffed price. As stated in the Declaration of Craig Plue, if a CLEC withdraws a DS-1 UNE order which has been a deemed a "no facilities available" order and resubmits it as a special access facility order a firm order commitment will miraculously appear from Verizon. Thus, there is little question that although Verizon can provide these facilities, it would prefer to have CLECs obtain them through the less desirable and more costly special access process. Of course, Verizon's assertion that it may provide DS-1 UNEs "at its discretion" is a candid admission of its intent to discriminate in the provision of DS-1 UNEs.

Verizon's new policy has already created a sufficiently dire situation in regard to DS-1 provisioning that Cavalier and Broadslate have had to file complaints to address the issue. Cavalier has filed a complaint with the Commission's Enforcement Bureau requesting that the matter be considered in the Bureau's Accelerated Docket.²³ Broadslate has filed a petition for expedited relief with the Virginia State Corporation Commission.²⁴ Both carriers have noted a substantial spike in DS-1 UNE order rejects since the implementation of the new policy. In Virginia, Broadslate's percentage of DS-1 UNE orders rejected by Verizon rose from 2% in the

July 24 Verizon Letter at 1.

²¹ *Id.* at 2.

Plue Declaration at 6.

²³ See Cavalier Enforcement Letter.

Petition of Broadslate Networks of Virginia, Inc. for Declaratory and Other Relief and Request for Expedited Relief, Virginia State Corporation Commission (August 2, 2001) ("Broadslate Complaint").

period preceding the implementation of the policy to approximately 66% under the new policy.²⁵ Prior to the policy change, Broadslate had 93 of its 94 DS-1 UNE orders filled for Virginia and Pennsylvania. After the new policy was implemented, only 3 of its 9 orders have been filled. The only basis given for these rejects was "no facilities." Cavalier experienced a similar substantial increase in the amount of DS-1 UNE orders rejected.²⁶ For those orders that did receive a firm order confirmation, there was a significant increase in the percentage of orders for which an extended and unreasonable FOC date was quoted.²⁷

C. Verizon's High Capacity Facilities Provisioning Policy Is Discriminatory

Verizon makes no attempt to mask the discriminatory nature of its policy. If its retail arm is ordering the facilities they will be provided. Verizon admits that it "has construction underway to meet anticipated future demand." In fact, the primary way for CLECs to be able to get access to conditioned loops in the future will be if the loop has been already conditioned for the customer when the customer was a Verizon retail customer. Verizon is conditioning loops and transport, by adding the appropriate electronics, for its retail arm and retail customers. In those situations where Verizon deigns to condition the DS-1 facilities for a CLEC it imposes special construction charges and other tariffed charges on the CLEC. 30

²⁵ Broadslate Complaint at 7.

²⁶ Cavalier Enforcement Letter at 2.

²⁷ Broadslate Complaint at 11.

July 24 Verizon Letter at 1.

Broadslate Complaint at 11.

ld. Upon information and belief, these charges are already included, or should have been included, in Verizon's rates for unbundled loops and transport since those rates are intended to recover all forward-looking costs of the network element. Thus, these special construction charges may lead to double recovery of Verizon's costs. Id. at 12.

Verizon does not impose similar charges on its retail customers or its retail arm in similar situations.³¹

This policy is blatantly discriminatory and designed to provide Verizon an unfair advantage in the lucrative advanced services market by assuming that it has adequate facilities for its own retail services but not for provisioning of UNEs. As this Commission has noted, high-capacity facilities are "absolutely necessary for the ubiquitous deployment of high-speed services, including high speed internet access" and that "failing to assure access to high-capacity loops would impair [a CLEC's] ability to provide the services that they seek to offer in the broadband service markets."

Continuation of Verizon's policy would give its own retail arm a substantial advantage over CLECs in the deployment of high-capacity facilities. As noted in the initial round of comments, if CLECs are required to purchase DS-1 UNEs as special access facilities, they will pay a much higher price and be subject to the well-documented delays in obtaining special access facilities.³³ The process will be particularly attenuated when Verizon issues a firm order commitment for a DS-1 UNE order, and then subsequently "finds" that facilities are not available. Verizon states it will not build new facilities to complete these orders despite its initial FOC which both the CLEC and its customer relied upon.³⁴ The only way the CLEC could complete these orders is if it resubmitted them as special access order.

Broadslate Complaint at 11.

³² Cavalier Comments (citing UNE Remand Order at ¶ 187).

Broadslate/CTSI/XO Comments at 9-12.

July 24 Verizon Letter at 2.

D. Verizon's New Policy Is Particularly Problematic In The Context Of Its Current Application

The initial round of comments demonstrated that Verizon's provisioning of DS-1 UNEs was poor.³⁵ Verizon relied extensively on the "facilities not available" excuse as a way to maintain the illusion of improved performance, and even when those orders were excluded from the performance metrics, its performance was still out of parity.³⁶ Verizon's new policy will guarantee that more orders are defined as "facilities not available" and excluded from the applicable metrics. CLECs have seen a spike in the amount of DS-1 UNE orders defined as "facilities not available" since Verizon's policy was implemented.³⁷ Thus, these orders will be excluded from the relevant metrics. This impedes the Commission's ability to discern nondiscriminatory performance in this proceeding, and if Verizon obtains section 271 authority, it will impair the Commission's ability to determine the extent of backsliding.

Under Verizon's new policy, CLECs will be forced to place DS-1 UNE orders as special access orders, which the Commission has declined to consider as evidence of checklist compliance or non-compliance.³⁸ Thus, this new policy will remove a significant amount of DS-1 UNE orders from regulatory oversight in the Section 271 context.³⁹ Since Verizon purports to make the designation of when "facilities are available" and since it allows itself to make the decision at any time in the provisioning process, Verizon can basically pick the orders that will

Broadslate/CTSI/XO Comments at 3; Capsule/Covista/US LEC Comments at 4-6.

³⁶ Capsule/Covista/US LEC Comments at 5.

Cavalier Enforcement Letter at 2; Plue Declaration at ¶ 4.

Broadslate/CTSI/XO Comments at 10.

See Plue Declaration at 10.

be subject to the applicable DS-1 provisioning metric. For instance, if it looks like it will not meet an applicable provisioning interval, it can simply designate the order as a "facility not available." The performance metrics will give no indication of DS-1 UNE provisioning performance as these orders will have been effectively redefined by Verizon as special access orders.

II. Verizon Does Not Provide Nondiscriminatory Access To White Pages Directory Listings (Checklist Item 8)

As Joint Commenters Broadslate, CTSI and XO explained in their comments, Verizon has consistently failed to include complete and accurate directory listings for CLEC customers, and has not demonstrated that it meets Checklist Item 8. The Pennsylvania Office of Consumer Advocate ("Consumer Advocate") likewise established that CLECs do not have nondiscriminatory access to white page directory listing and recommended that Verizon's application be denied until Verizon can produce white page listings for CLECs with the same level of accuracy that it offers to its retail customers. In addition, like Joint Commenters Broadslate, CTSI, and XO, the Consumer Advocate urged the Commission to require the Pennsylvania PUC to develop a performance metric to track the accuracy of directory listings, and to include substantial penalties for failure to meet the standards associated with such a metric. The Joint Commenters support the OCA's comments and recommendations.

Additionally, as discussed in Section III herein, below, the Justice Department Evaluation suggested the need for several modifications to the Performance Assurance Plan adopted by the Pennsylvania PUC, including more effective performance metrics and increased penalties for failure to meet required performance levels.⁴² The Joint Commenters submit that any strengthening of the PAP must include a metric addressing white pages accuracy and must assess substantial financial penalties for Verizon's failure to meet its performance obligations.

Comments of the Pennsylvania Office of Consumer Advocate at 16-28 ("Consumer Advocate Comments").

Consumer Advocate Comments at 28-32.

Evaluation of the United States Department of Justice at 15-18 ("Justice Department Evaluation").

As the Consumer Advocate noted, Verizon's failure to provide complete, accurate white page listings for CLEC customers is a systemic problem, which this Commission has indicated warrants rejection of Verizon's application for failure to meet Checklist Item 8.⁴³ The evidence produced at the state level, and offered by Joint Commenters and the Consumer Advocate in this proceeding, clearly demonstrates that Verizon has committed numerous white pages directory listings errors for CLEC customers. Joint Petitioners and the Consumer Advocate demonstrated that, in many cases, Verizon's error rate for CLEC listings exceeds ten times its error rate for its own retail listings.⁴⁴ In fact, the Pennsylvania PUC found that "CLECs in this proceeding did demonstrate the manual nature of much of the process [which is not present in Verizon's own retail process] heightens the chance of errors.³⁴⁵ Nonetheless, the Pennsylvania PUC failed to respond to Verizon's discriminatory treatment of CLECs by recommending rejection of Verizon's application. This Commission should correct that error and, recognizing Verizon's failure to comply with Checklist Item 8, should reject Verizon's Application.

The Consumer Advocate briefly described Verizon's process for handling directory listing orders and noted that orders associated with facilities-based CLECs typically do not "flowthrough" Verizon's ordering system. 46 Rather, facilities-based CLEC orders are manually

Consumer Advocate Comments at 16-18 (citing In the Matter of Application by SBC Communications, Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas, Memorandum Opinion and Order, 15 FCC Rcd. 18235, FCC 00-238, at ¶ 358 (rel. June 30, 200) ("if there was a systemic problem involving a number of listings, it would warrant a finding of noncompliance.")).

Unlike other Verizon errors, which in some cases can be remedied in a period of weeks or months, a CLEC customer whose directory listing information is omitted or inaccurately listed by Verizon must contend with the effects of that error for a year or more.

Pennsylvania Consultative Report at 208.

Consumer Advocate Comments at 19-22. As the Joint Commenters explained, a significant portion of CLEC orders, including orders involving more than 6 lines, complex orders and directory listing changes, as well as facilities-based orders, do not "flowthrough" Verizon's ordering system and thus must be entered manually. See

processed, *i.e.*, retyped, by a Verizon service representative before being submitted to Verizon's directory listing organization.⁴⁷ In fact, the Consumer Advocate pointed out that the primary source of directory listing errors has involved facilities-based carriers, such as Joint Commenters.⁴⁸ The Consumer Advocate correctly explained that when a facilities-based CLEC submits an order for a former Verizon customer, a Verizon service representative deletes that customer's listing from Verizon's white pages database and then retypes the customer's directory information for transmission to Verizon Information Services ("VIS"), Verizon's directory listing organization.⁴⁹ As a result, the Consumer Advocate stated, Verizon's manually processing of CLEC directory orders creates additional difficulties and concerns, and is likely to result in poorer performance for CLEC listings than for Verizon listings.⁵⁰

Both the Consumer Advocate and Joint Commenters Broadslate, CTSI and XO stated that, while Verizon has offered limited proposals that Verizon alleges will address some of the directory listing problems, Verizon's proposals are untested and uncertain⁵¹ Regardless of Verizon's claims that it will implement changes, the fact is that Verizon has not committed to anything. Verizon's proposals are nothing more than non-binding statements that it may take

Broadslate/CTSI/XO Comments at 16-17. However, Joint Commenters agree with the Consumer Advocate that the "flowthrough" problem disproportionately affects facilities-based CLECs. Broadslate/CTSI/XO Comments at 16.

Consumer Advocate Comments at 20 (citing Pa. PUC Mar. 1, 2001 Tech. Conf., Tr. 11-12).

⁴⁸ *Id.* at 21.

Id. See also Broadslate/CTSI/XO Comments at 17-18. As the Joint Commenters noted, while Verizon's manual processing of CLEC orders creates numerous opportunities for human error, the problems inherent in the system are best evidenced by the fact that Verizon's processing of "as is" orders, which do not request any change from the previous listing in Verizon's database, often result in inaccurate or omitted listings.

Consumer Advocate Comments at 20.

Id. at 22-23; Broadslate/CTSI/XO Comments at 18-20.

some unspecified actions at an uncertain future date that may resolve directory listing problems. Such ambiguous illusory promises cannot furnish a sustainable basis for compliance with Checklist Item 8.

In recommending approval of Verizon's application, the Pennsylvania PUC noted that Verizon committed to certain updates and revisions to its ordering process to reduce the number of CLEC orders that are manually processed; however, as the Consumer Advocate points out, Verizon has not actually implemented any of its proposals, nor has it reached an agreement with interested parties as to when or how it will implement the proposals. More importantly, Verizon has not demonstrated that its proposed solutions will actually improve its directory listing performance even if they are ever implemented. Therefore, Joint Commenters agree with the Consumer Advocate that "Checklist Item 8 does not state that Verizon must attempt to provide equal access in the future, but that Verizon must be found to have already met the requirements of this Checklist Item" before being granted Section 271 approval. The record clearly demonstrates that Verizon has not done so in this case.

See Consumer Advocate Comments at 27 (citing Pennsylvania Consultative Report at 208-209).

⁵³ *Id.* at 22-23, 27.

Even assuming that Verizon's proposals will improve its directory listing performance, which Joint Commenters do not concede is not the case, any benefits of those proposals will not be realized by CLECs and their customers for a year or more after Verizon implements the changes due to the annual publication schedule for white pages directories. For this and other reasons, it is extremely important that the Commission order the establishment of a performance metric, and associated penalties, for directory listing accuracy to ensure not only that Verizon undertakes to improve its performance, but that significant disincentives are in place to prevent backsliding.

Consumer Advocate Comments at 27-28. See also Pennsylvania Consultative Report, Appendix A at 1 ("[t]he Telecommunications Act plainly requires Verizon to satisfy the fourteen-point checklist before it enters the long-distance market.") (dissenting statement of Commissioner Terrence J. Fitzpatrick) (emphasis in original). As the Department of Justice noted, reliance on post-approval remedies is not a sufficient basis for granting approval of Verizon's application. Justice Department Evaluation at 18.

The Consumer Advocate, like Joint Commenters Broadslate, CTSI and XO, demonstrated that CLEC error rates are significantly higher than the error rate Verizon admitted for its own retail customers. Werizon admitted in response to a data request that its customers reported 1,156 directory listing errors out of approximately 4.4 million total directory listings for its retail customers, which produces an error rate of approximately 0.02%. In contrast, as the Consumer Advocate shows, the evidence produced before the Pennsylvania PUC demonstrated that Verizon's error rate for CLEC directory listings ranges from 1.59% to 4.05% or nearly 80 to 200 times that for Verizon's retail customers. Clearly, Verizon does not provide the same level of accuracy to CLECs with respect to directory listings that it provides its own retail customers, as required by Checklist Item 8.

Even more significant, as the Consumer Advocate states, is Verizon's failure to correct directory listing errors identified by CLECs prior to publication of the directories.⁵⁹ As Joint Commenters Broadslate, CTSI and XO explained, CLECs typically identify, and provide detailed corrective information for, numerous errors on the Listing Verification Report ("LVR") provided by Verizon prior to publication of a directory.⁶⁰ Nonetheless, Verizon often fails to

⁵⁶ Consumer Advocate Comments at 24-26.

See Id. at 25 (citing CTSI Interrogatory to Verizon, No. I-30); Pa. PUC March 1, 2001 Tech. Conf. Tr. 213-214) (stating that Verizon has approximately 4.9 million directory listings in its database). Verizon's application identified approximately 380,000 CLEC and approximately 95,000 reseller listings in the database as of April. See Lacouture/Ruesterholz Declaration ¶ 390.

Consumer Advocate Comments at 25 (citing Pa. PUC March 1, 2001 Tech. Conf. Tr. 180-181).

⁵⁹ *Id.* at 26.

Broadslate/CTSI/XO Comments at 23-24. For example, in its recent review of Verizon's LVR for the upcoming 2001 Hampton Roads, Virginia publication, Cavalier identified approximately 5000 Verizon generated errors for the proposed listings for 14,000 customers, or greater than 1 out of every 3 of these listings.

correct many of the identified errors.⁶¹ Verizon attempts to cover up its obviously poor performance in this regard by arguing that many of the errors identified by CLECs cannot be conclusively linked to an error on Verizon's part. As the Consumer Advocate and Joint Commenters Broadslate, CTSI and XO stated, regardless of whether Verizon or the CLEC is initially responsible for the errors, the fact remains that it is Verizon that subsequently fails to correct the errors identified to it by the CLEC.⁶² As a result, CLECs experience a greater, discriminatory number of directory listing errors than do Verizon's own retail customers.

Joint Commenters agree with the Consumer Advocate that the establishment of a metric to track the accuracy of Verizon's directory listings is a precondition to Verizon's Section 271 approval. As the Consumer Advocate noted, Verizon admits that it does not track its own performance with respect to white page directory listings. Similarly, none of the Pennsylvania metrics currently in place measures the accuracy of Verizon's provision of directory listings. Thus, this Commission, the Pennsylvania PUC⁶⁵ and CLECs have no way to determine whether Verizon is providing complete, accurate directory listings for CLEC customers or whether Verizon is correcting directory listings errors identified by CLECs. Joint Petitioners join the

Broadslate/CTSI/XO Comments at 24. See also Consumer Advocate Comments at 26. Indeed, as the Consumer Advocate showed, in some cases, more than 40% of the errors identified by CLECs are not corrected when the directory is published. Consumer Advocate Comments at 26.

⁶² Consumer Advocate Comments at 26; Broadslate/CTSI/XO Comments at 22-23.

⁶³ *Id.* at 30.

Id. at 28-29. In addition to a metric measuring the accuracy of directory listings based upon a comparison of the information provided by a CLEC to the information ultimately published, Joint Commenters submit that the Commission should establish a metric to measure the accuracy with which Verizon corrects errors identified on a CLEC's LVR (e.g., by comparing the number of errors identified by the CLEC to the number of errors remaining in the published directory).

Significantly, the Pennsylvania PUC found in its Consultative Report that the record suggests there is merit to the development of a directory listing accuracy metric. Nonetheless, the Commission failed to follow up on its finding. Consultative Report at 209. This Commission should correct that error and order the development of a metric for white pages.

Consumer Advocate in submitting that such a metric is needed in this case and that it should include substantial monetary penalties for noncompliance.

The Justice Department Evaluation also emphasized the need for a stronger PAP.⁶⁶ An effective PAP must also include an appropriate metric for white pages listings, as well as associated penalties for noncompliance. As the Justice Department noted, the current PAP does not include appropriate incentives for Verizon to perform in a nondiscriminatory fashion that corresponds to the amount of competitive harm that could be caused by discriminatory performance.⁶⁷ Nor does the PAP include financial penalties that reflect the relative importance of particular metrics to competition, or that closely correlates to the severity of poor performance.⁶⁸ Verizon's white page directory listing performance is a perfect example of these shortcomings.

When Verizon fails to provide accurate directory listings to CLEC customers, the customers must contend with the results of that failure for a year or more. ⁶⁹ Such customers blame their CLEC provider and, in some cases, switch back to Verizon under the assumption, supported by Verizon's discriminatory performance, that they will receive better treatment from Verizon. As a result, CLECs, and thus competition, are placed at a competitive disadvantage due to Verizon's discriminatory treatment of CLEC directory listings. A properly structured performance metric for white pages, with substantial, cumulative penalties for noncompliance would enable the Pennsylvania PUC to address these issues and ensure that Verizon continues to

Justice Department Evaluation at 15-18.

⁶⁷ *Id.* at 16.

⁶⁸ *Id*. at 16.

⁶⁹ Consumer Advocate Comments at 18.

meet its legal obligations if it ultimately satisfies this Commission that it has complied with the Checklist Items. Accordingly, Joint Commenters submit that Verizon's Application should be denied until such time as these concerns are remedied.

Joint Commenters have also encountered similar problems with Verizon's operation of its directory assistance database. Specifically, Joint Commenters have observed that CLEC customers' directory listing information frequently disappears or is removed from the Verizon database for no apparent reason. It is Joint Commenters' understanding that when a CLEC submits directory listing information with its order, that information is then forwarded to VIS where the information is input into Verizon's directory listing and directory assistance datebases. Nonetheless, on several occasions, Joint Commenters have discovered that directory listing information submitted to Verizon is not in the directory assistance database. In fact, it is not uncommon for CLECs to have to submit multiple requests to have the information reentered before the directory listing information actually appears, and remains in the directory assistance datebase. It is unclear to Joint Commenters how or why such removal of CLEC directory listing information occurs; but, regardless of the reason, such occurrences place CLECs at a competitive disadvantage.

III. Verizon's Application Must Not Be Approved Until The Performance Assurance Plan Is Strengthened

As indicated by the serious concerns voiced by the Justice Department, there is ample evidence that the existing PAP is insufficient to serve the required purpose of preventing backsliding if Verizon achieves its objective of gaining Section 271 authority. The PAP's

Justice Department Evaluation at 14-17.

shortcomings cited by the Justice Department include the lack of effective billing metrics,⁷¹ an insufficient penalty structure,⁷² and a failure to "align Verizon's incentives to perform in a nondiscriminatory fashion with the amount of competitive harm that could be caused by discriminatory performance.⁷³ The Joint Commenters urge the Commission to withhold any potential approval of the Application until these deficiencies have been remedied.

The Joint Commenters agree with those parties who emphasized the fact that the current performance metrics omit several measures that are critical to detecting discriminatory performance.⁷⁴ In particular, as addressed herein, the Joint Commenters emphasize that a metric must be developed to assess the accuracy of white pages directory listings. As explained in the Joint Comments of Broadslate, CTSI, and XO, and in the Comments of the Pennsylvania Office of Consumer Advocate, the implementation of such a metric should be required *before* any favorable recommendation is taken on Verizon's Section 271 request.⁷⁵

The Joint Commenters likewise share the concerns of AT&T and WorldCom, who highlighted the PAP's critical omission of order flowthrough rates. Although the New York PAP includes remedies associated with two flowthrough measurements and every BOC that

Justice Department Evaluation at 15.

⁷² *Id.*

⁷³ *Id.*

Comments of AT&T Corp. at 56-58 ("AT&T Comments"); Comments of WorldCom, Inc. at 10 ("WorldCom Comments"); Consumer Advocate Comments at 28-32.

⁷⁵ Broadslate/CTSI/XO Comments at 20; Consumer Advocate Comments at 31.

WorldCom Comments at 10; AT&T Comments at 57.

AT&T Comments at 56.

has received Section 271 approval has been subject to penalties related to flowthrough,⁷⁸ these safeguards are noticeably absent from the Pennsylvania PAP.⁷⁹ This glaring deficiency must be rectified before the Commission gives any serious consideration to the Application.

Furthermore, even if the metrics accurately captured the essential areas of Verizon's performance that are necessary to evaluate whether Verizon's performance is nondiscriminatory, the associated penalty structure does not provide the necessary deterrent against anticompetitive behavior. The Joint Commenters agree with the positions taken by other parties which demonstrate that the PAP must be strengthened as a precondition to Section 271 approval.⁸⁰

IV. Verizon's Failure To Produce Accurate and Auditable Electronic Bills Precludes Any Favorable Action On The Application (Checklist Item 2)

In assessing whether Verizon has complied with its obligation to provide nondiscriminatory access to its OSS for Section 271 purposes, including the billing component, the Commission's inquiry should start with the Justice Department's Evaluation of Verizon's shortcomings in the area of electronic billing. The inferior state of Verizon's electronic billing systems is so woefully defective that the Justice Department was compelled to conclude that it is presently unable to endorse Verizon's Application.⁸¹ The Commission should do likewise and decline to grant Section 271 authority to Verizon until it demonstrates that it has complied with the requirements of the Competitive Checklist regarding OSS.⁸²

WorldCom Comments at 10.

As noted by AT&T, the Pennsylvania performance metrics include a "total flowthrough" measurement that is reported by Verizon solely for diagnostic purposes, and it is *expressly* excluded from the PAP. AT&T Comments at 57.

AT&T Comments at 61; WorldCom Comments at 15-18. See Justice Department Evaluation at 14-17.

Justice Department Evaluation at 3, 14, 17.

⁸² See 47 U.S.C. § 271(c)(2)(B)(ii).

The critical importance of accurate and auditable electronic bills to opening the local exchange market to competition cannot be underestimated. As noted by the Justice Department, the absence of functional electronic bills leaves CLECs without a practical means of determining whether Verizon is correctly charging them for services they have ordered.⁸³ The Justice Department identified numerous other difficulties attributed to the lack of accurate and functional electronic bills, including the increased cost of doing business in Pennsylvania,⁸⁴ additional time spent in an attempt to reconcile the bills sent by Verizon,⁸⁵ the loss of funds paid to Verizon during the pendency of a billing dispute,⁸⁶ doubt over whether increased local competition will further diminish the ability of Verizon's systems to support the billing needs of CLECs,⁸⁷ and even more disturbing questions about whether Verizon can handle *current* billing volumes in an efficient and acceptable manner.⁸⁸

The Justice Department's concerns regarding the viability of Verizon's electronic billing capability are confirmed by the landslide of comments submitted by other parties. Commenters furnished ample proof of the stifling adverse effect of Verizon's inability to provide CLECs with commercially viable electronic bills on the emergence of local competition in Pennsylvania. The record is replete with evidence that Verizon's claims of adequate electronic billing functionality are simply incorrect, and plagued by such shortcomings as a complex and manual "workaround"

³³ Justice Department Evaluation at 11.

⁸⁴ *Id*.

¹⁵ *Id*.

i6 *Id*.

⁸⁷ *Id.*

⁸⁸ *Id.*

process⁸⁹ and fundamental and substantive inaccuracies that render the bills impossible to audit.⁹⁰ In fact, Verizon's shortcomings in the area of electronic billing played a substantial role in the decision of Pennsylvania Public Utility Commissioners Brownell and Fitzpatrick to vote against recommending approval of the Application.⁹¹

The Joint Commenters agree with the Justice Department's cautionary statement that "the Commission should take care to avoid a precedent that would permit the requirements of Section 271 to be satisfied merely by promises of future compliance." The serious reservations expressed by the Justice Department regarding Verizon's failure to provide usable and accurate electronic bills, coupled with the undeniable evidence produced by numerous commenters on this subject, compel the Commission to deny Verizon's Application.

V. Verizon's "GRIPS" Policy Violates Its Legal Obligation To Permit CLECs To Interconnect At One Point Per LATA (Checklist Item 1)

The Joint Commenters agree with Sprint and WorldCom's position that Verizon's Geographically Relevant Interconnection Points ("GRIPs") proposal represents an improper violation of the Commission's rules and governing law. 93 Under the GRIPs scheme, CLECs are denied the right to interconnect to Verizon's network at all technically feasible points, including

⁸⁹ AT&T Comments at 53.

Capsule/Covista/US LEC Comments at 16; Covad Comments at 21; Comments of Z-Tel Communications, Inc. at 8 ("Z-Tel Comments"); WorldCom Comments at 5-6.

Pa. PUC Docket No. M-00001435, Dissenting Statement of Commissioner Nora Mead Borwnell at 1-2 ("Verizon must implement adjustments to its electronic billing systems to insure that CLECs are able to obtain timely and accurate electronic bills...without confidence that the billing systems are absolutely able to deliver adequate services and billing support to customers, I do not see how the market can work") and Dissenting and Concurring Statement of Commissioner Terrance J. Fitzpatrick ("The problem here is that, despite its efforts over the past two years, Verizon has yet to provide CLECs with an electronic bill which is sufficiently reliable that Verizon will consider it the official 'bill of record").

Justice Department Evaluation at 14.

a single point of interconnection within a LATA. This practice results in CLECs being forced to incur unnecessary costs to build multiple interconnection points within a LATA, or to pay for Verizon's costs of transporting its originating traffic to the CLEC's point of interconnection.⁹⁴

What is particularly troubling about Verizon's GRIPs proposal is that CLECs have no viable alternative in Pennsylvania. Sprint noted that it could not find one interconnection agreement available for opt-in pursuant to Section 252(i) that allows a CLEC to designate a single point of interconnection per LATA. The interconnection agreements that Verizon claims allows for a single point of interconnection per LATA require CLECs to either collocate at multiple points in a LATA or pay for Verizon's cost of transport. It is not surprising that there is a lack of such available agreements given Verizon's intransigence on this issue. Verizon admits that it will force a CLEC into arbitration to obtain multiple points of interconnection.

US LEC concurs with Sprint's assessment of the landscape of interconnection agreements on the issue of interconnection points. US LEC could not find an agreement to opt into that would provide a single point of interconnection per LATA. This situation was exacerbated by the fact that Verizon refused to abide by the most-favored nation provisions found in this Commission's *BA/GTE Merger Order*. 98 Verizon refused to allow US LEC to

Comments of Sprint Communications, L.P. at 2-8 ("Sprint Comments"); WorldCom Comments at 30-31. See 47 C.F.R. § 51.321(a); UNE Remand Order, at ¶ 209.

See Sprint Comments at 4.

⁹⁵ *Id.* at 8.

⁹⁶ Id.

⁹⁷ *Id.* at 6, fn. 11.

See GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Authorizations and Applications to Transfer Control of a Submarine Cable Landing License, CC Docket No. 98-184, Memorandum Opinion and Order (Jun. 16, 2000).

adopt certain "out of state" interconnection agreements which limited the available options. Verizon also refused to budge on the GRIPs issue even though requiring US LEC to tailor its network architecture to GRIPs may have resulted in a reduction of Verizon monthly revenue since US LEC was leasing SONET rings from Verizon at a substantial monthly cost. Thus, Verizon was not concerned with establishing an interconnection arrangement that made the most fiscal sense for both the parties, but rather wanted to ensure that its GRIPs approach was protected at all cost. As a result of Verizon's stance, US LEC simply had no alternative to the GRIPs language. ⁹⁹

As Sprint notes, this Commission has held in prior Section 271 orders, that an RBOC will meet the checklist requirement to interconnect at a single point in a LATA if it has executed at least one interconnection agreement that allows a single point of interconnection per LATA. As both Sprint and US LEC's experience in Pennsylvania demonstrates there are no such agreements. The cost implication for carriers such as US LEC that rely on a SONET network architecture are great. Such carriers use SONET facilities so that they do not have to collocate at multiple points on the ILEC network. The GRIPs scheme, with its multiple required points of interconnection deep into the ILEC network, is not conducive to use of SONET facilities.

CLECs will be left with the Hobson's choice of having to incur the costly expense of collocation at more locations or paying Verizon for transport. This "choice" reimposes the barriers to competitive entry that the Commission sought to eradicate with the single point of

The only other available agreements required CLECs to collocate at a single point of interconnection *per tandem switch* and thus was only marginally better than GRIPs, and certainly not in accord with the Commission's single point of interconnection per LATA policy.

Sprint Comments at 7.

interconnection policy. As the Commission notes, allowing a single point of interconnection within a LATA, "lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic." Verizon's GRIPs scheme, and its negotiating posture, have eliminated this choice for CLECs. Verizon's posture regarding interconnection clearly violates the requirements of Checklist Item 1.

¹⁰¹ Id. at 3 (quoting Local Competition Order at ¶ 209).

VI. Conclusion

For the foregoing reasons, Broadslate Networks, Inc., CTSI, Inc., Cavalier Telephone, LLC, Focal Communications Corporation, US LEC, Corp., and XO Communications, Inc. urge the Commission to deny Verizon's Application for Provision of In-Region InterLATA Services in Pennsylvania.

John Spilman Broadslate Networks, Inc. 630 Peter Jefferson Parkway Suite 300 Charlottesville, Virginia Washington, DC 2000

Alan M. Shoer Cavalier Telephone, LLC 2134 West Laburnum Ave. Richmond, Virginia 23227

Ronald L. Reeder CTSI, Inc. 3950 Chambers Hill Rd. Harrisburg, Pennsylvania 17111

Sumner N. Smith
US LEC Corp.
Three Morrocroft Centre
6801 Morrison Blvd.
Charlotte, North Carolina 28211

Respectfully submitted,

Andrew D. Lipman
Robin F. Cohn
Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
(202) 424-7500 (telephone)
(202) 424-7645

Counsel for Broadslate Networks, Inc., CTSI, Inc., Focal Communications Corporation, US LEC Corp., and XO Communications, Inc.

Richard Metzger Pamela Arluk Focal Communications Corporation 7799 Leesburg Pike, 850 North Falls Church, Virginia 22043

Renardo L. Hicks XO Communications, Inc. 2960 Commerce Drive Harrisburg, Pennsylvania 17110

EXHIBIT A



July 24, 2001

DS1 and DS3 Unbundled Network Elements Policy

A number of carriers have recently expressed concern that Verizon is changing its policies with respect to the construction of new DS1 and DS3 Unbundled Network Elements. This is not the case. To ensure that there is no misunderstanding on this point this letter restates Verizon's policies and practices with respect to the provisioning of unbundled DS1 and DS3 network elements.

In compliance with its obligations under applicable law, Verizon will provide unbundled DS1 and DS3 facilities (loops or IOF) to requesting CLECs where existing facilities are currently available. Conversely, Verizon is not obligated to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers. This policy, which is entirely consistent with Verizon's obligations under applicable law, is clearly stated in Verizon's relevant state tariffs and the CLEC Handbook, and is reflected in the language of Verizon's various interconnection agreements.

This does not mean that CLECs have no other options for obtaining requested facilities from Verizon.

In areas where Verizon has construction underway to meet anticipated future demand, Verizon's field engineers will provide a due date on CLEC orders for unbundled DS1 and DS3 network elements based on the estimated completion date of that pending job, even though no facilities are immediately available. Rigid adherence to existing policies could dictate that the field engineers reject these orders due to the lack of available facilities; but in an effort to provide a superior level of service, Verizon has chosen not to do so. In such cases, the result is that the order is filled, but the provisioning interval is longer than normal. At the same time, Verizon's wholesale customers should not confuse these discretionary efforts to provide a superior level of service with a perceived *obligation* to construct new facilities.

Moreover, although Verizon has no legal obligation to add DS1/DS3 electronics to available wire or fiber facilities to fill a CLEC order for an unbundled DS1/DS3 network element, Verizon's practice is to fill CLEC orders for unbundled DS1/DS3 network elements as long as the central office common equipment and equipment at end user's location necessary to create a DS1/DS3 facility can be accessed. However, Verizon will reject an order for an unbundled DS1/DS3 network element where (i) it does not have the common equipment in the central office, at the end user's location, or outside plant facility needed to provide a DS1/DS3 network element, or (ii) there is no available wire or fiber facility between the central office and the end user.

Specifically, when Verizon receives an order for an unbundled DS1/DS3 network element, Verizon's Engineering or facility assignment personnel will check to see if existing common equipment in the central office and at the end user's location has spare ports or slots. If there is capacity on this common equipment, operations personnel will perform the cross connection work between the common equipment

and the wire or fiber facility running to the end user and install the appropriate DS1/DS3 cards in the existing multiplexers. They will also correct conditions on an existing copper facility that could impact transmission characteristics. Although they will place a doubler into an existing apparatus case, they will not attach new apparatus cases to copper plant in order to condition the line for DS1 service. At the end user's end of the wire or fiber facility, Verizon will terminate the DS1/DS3 loop in the appropriate Network Interface Device (Smart Jack or Digital Cross Connect (DSX) Panel).

In addition, if Verizon responds to a CLEC request for an unbundled DS1/DS3 network element with a Firm Order Completion date (FOC), indicating that Verizon has spare facilities to complete the service request, and if Verizon subsequently finds that the proposed spare facilities are defective, Verizon will perform the work necessary to clear the defect. In the event that the defect cannot be corrected, resulting in no spare facilities, or if Verizon has indicated that there are spare facilities and Verizon subsequently finds that there are no spare facilities, Verizon will not build new facilities to complete the service request.

Finally, wholesale customers of Verizon, like its retail customers, may request Verizon to provide DS1 and DS3 services pursuant to the applicable state or federal tariffs. While these tariffs also state that Verizon is not obligated to provide service where facilities are not available, Verizon generally will undertake to construct the facilities required to provide service at tariffed rates (including any applicable special construction rates) if the required work is consistent with Verizon's current design practices and construction program. Even in these cases, of course, Verizon must retain the right to manage its construction program on a dynamic basis as necessary to meet both its service obligations and its obligation to manage the business in a fiscally prudent manner.

In summary, although Verizon's policies regarding the construction of new DS1 and DS3 Unbundled Network Elements remain unchanged, Verizon continues to strive to meet the requirements of its wholesale customers for unbundled DS1 and DS3 facilities in a manner that is consistent with the sound management of its business.

If you have any questions regarding Verizon's unbundled DS1/DS3 building practice, you may contact your Account Manager.

Certificate of Service

I, hereby certify that I have caused a true and accurate copy of the foregoing Reply Comments of Broadslate Networks, Inc., Cavalier Telephone, LLC, CTSI, Inc., Focal Communications Corporation, US LEC Corp., and XO Communications, Inc., to be served on the attached via overnight mail or hand delivery* or first class mail:

Magalie Roman Salas, Esq.* (orig. +4 + disk) Secretary Federal Communications Commission 445 12th Street, SW, Room TW-B204 Washington, DC 20554

Janice Myles (12 copies)*
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C327
Washington, DC 20554

ITS*
445 12th Street, SW
The Portals
Washington, DC 20554

James J. McNulty*
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Chairman Michael K. Powell
Commission Kathleen Abernathy
Commissioner Michael Copps
Commissioner Gloria Tristani
Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Carol Ann Bischoff
Maureen Flood
Competitive Telecommunications Assoc.
1900 M Street, N.W.
Washington, DC 20036

Laury E. Bobbish
W. Robert Majure
John Henley
Jeffrey Prisbey
Cynthia R. Lewis
Susan Wittenberg
Frances Marshall
Luin P. Fitch
J. Parker Erkmann
Lauren J. Fisbein
Antitrust Division
U.S. Department of Justice
1401 H Street, N.W., Suite 8000
Washington, DC 20530

Philip McClelland
Senior Assistant Consumer Advocate
Commonwealth of Pennsylvania
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-1923

Michael E. Glover Verizon 1320 North Court House Road Eighth Floor Arlington, VA 22201 Debbie Goldman George Kohl Communications Workers of America 501 3rd Street, N.W. Washington, DC 20001

Robert Aamoth
Steven Augustino
Andrew Klein
Jennifer Kashatus
Kelley Drye & Warren, LLP
1200 19th Street, N.W.
Washington, DC 20036

Robert Lopardo Keith Seat Senior Counsel Federal Law and Public Policy WorldCom 1133 19th Street, NW Washington, DC 20036

Mark D. Schneider Marc A. Goldman Jenner & Block, LLC 601 13th Street, N.W., Suite 1200 Washington, DC 20005

Jeffrey Owen Cooper Owen & Renner, PC 1600 Benedum Trees Building 223 Fourth Avenue Pittsburgh, PA 15222

Albert Kramer Jacob Farber Dickstein Shapiro Morin & Oshinsky, LLP 2101 L Street, N.W. Washington, DC 20037

Jonathan Canis Kelley Drye & Warren, LLP 1200 19th Street, NW Fifth Floor Washington, DC 20036 Michael Hazzard Tamara E. Connor Kelley Drye & Warren, LLP 8000 Towers Crescent Drive, Twelfth Floor Vienna, VA 22182

Christopher Moore Sprint 401 9th Street, N.W. Suite 400 Washington, DC 20004

Zsuzsanna Benedek Sprint 1201 Walnut Bottom Road Carlisle, PA 17013

A. Renee Callahan Willkie Farr & Gallagher Three Lafayette Centre 1155 21st Street, N.W., Suite 600 Washington, DC 20036

Shaun Wiggins
Executive Director
Keep America Connected!
P.O. Box 27911
Washington, DC 20005

Deborah Kaplan Executive Director World Institute on Disability 510 16th Street, Suite 100 Oakland, CA 94612

Christi Shewman Willkie Farr & Gallagher Three Lafayette Centre 1155 21st Street, N.W. Washington, DC 20036 Jason Oxman
Senior Counsel
Covad Communications Company
600 14th Street, N.W.
Suite 750
Washington, DC 20005

Mark Rosenblum Richard Rubin AT&T Corporation 295 North Maple Avenue Basking Ridge, NJ 07920

David Carpenter
Mark Haddad
Ronald Flagg
R. Merinda Wilson
David Lawson
Richard Young
Christopher Shenk
Ronald Steiner
Sidley Austin Brown & Wood
1722 Eye Street, N.W.
Washington, DC 20006

Rodney Joyce Shook, Hardy & Bacon, LLP Hamilton Square 600 14th Street, N.W., Suite 800 Washington, DC 20005-2004

Dirck Hargraves Counsel Telecommunications Research & Action Ctr. P.O. Box 27279 Washington, DC 20005

Charles Hunter Catherine Hannan Hunter Communications 1620 I Street, N.W., Suite 701 Washington, DC 20006

Candise M. Pharr